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DR. DANIEL P. MORRIS ESQ.
IBM CORPORATION
INTELLECTUAL PROPERTY LAW DEPT.
P.O. BOX 218
YORKTOWN HEIGHTS, NY 10598

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OFFICE OF PETITIONS

In re Application of
David W. Abraham et al : DECISION ON PETITION
Application No. 10/615,147 : UNDER 37 CFR 1.78(a)(3)
Filed: July 8, 2003 :
Attorney Docket No. YOR920010260US2 :
:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed May 10, 2006, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of the prior-filed nonprovisional applications.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant petition does not comply with item (1)

The reference to the prior-filed nonprovisional applications is inconsistent. In the amendment submitted on May 5, 2006, the claim for priority reference states that Application No. 10/128,838 is a continuation of U.S. Application No. 09/708,253, whereas in the petition submitted on May 10, 2006, the claim for priority reference states that Application No. 10/128,838 is a continuation in part of Application No. 09/708,253. Clarification is required.

Additionally, the petition to expedite under 37 CFR 1.182 submitted on May 10, 2006 is dismissed as moot and no fee charged.

Accordingly, before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition under 37 CFR § 1.78(a)(3) and a substitute amendment or an ADS to address the above matter is required.

Further correspondence with respect to this matter should be addressed as follows:

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Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.


Karen Creasy
Petitions Examiner
Office of Petitions